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ABSTRACT

A review of national presidential election campaigns since the passage of Section 315 of the Communications Act of 1934 indicates the inadequacies of that section and the need for its revision. Section 315 stipulates equal access to the mass media for all legally qualified political candidates. Basically, the difficulty with Section 315 is that it allows bigger, richer, better organized policical parties or candidates to manipulate the media, and that it creates confusion when minority and splinter candidates seek equal time. Based on this analysis, a proposal has been made to alter Section 315, defining "legally qualified candidate" as one who has been nominated by a party that received at least 2% of the total votes cast in the previous election for that office. The proposal would require new parties and independent candidates to obtain signatures from a number of registered voters equal to 2% of the votes cast for that office in the preceding primary election. The second part of this proposed revision of Section 315 would entail a series of debates between presidential candidates during each presidential election year. Carried on television and radio by the national networks, the time for the debates would be governed by a nonpartisan committee. The time for the debates would be donated by the broadcasters and offered to all "legally qualified candidates" who met the proposed 2% rule. (RL)

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A RE-EXAMINATION OF SECTION 315 OF THE COMMUNICATIONS ACT OF 1934

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A RE-EXAMINATION OF SECTION 315 OF THE COMMUNICATIONS ACT OF 1934

If the Neilson and Arbitron broadcast rating systems had been in existence in November of 1920 when pioneer radio station KDKA in Pittsburgh relayed election bulletins on the presidential election contest between Harding and Cox, the ratings would certainly have been impressive, perhaps reaching a 50% or higher share of the small audience twisting the dials of their crystal receivers. However, by the election of 1924 Calvin Coolidge, acting contrary to his reputation as "silent Cal," delivered the first election-eve political speech on a radio network.[1] In the same year of 1924 the Lord and Thomas advertising agency became the first known example of the utilization of professional media consultants when they helped the Republicans defeat Upton Sinclair in the California governorship race.[2]

Despite these indications of the wave of the future the signs were not yet clear enough to influence the Communications Act of 1927, which contained no reference to political campaign broadcasts. By 1934 when the communications act was revised and rewritten the situation had changed. In retrospect two events appear to have moved Congress to consider political broadcasting in the 1934 rewrite. In the presidential election campaign of 1932 Franklin Roosevelt had made moderately increased use of radio. Candidate Roosevelt found that most of the major newspapers were opposed to his election, and Roosevelt's physical disability made traditional stump politics somewhat awkward for him. Roosevelt took his mellifluous voice and calmly reassuring speaking style to radio and won a victory of major proportions.

As President Roosevelt was quick to grasp the potential of radio as a political medium, he used it to initiate a series of "fireside chats" in which he appealed directly to the people over the heads of Congress. It is not surprising then that Congress finally realized the need to write some political campaign regulations. The regulation reads as follows:

> If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station: Provided: That such licensee shall have no powers of censorship over the material broadcast under the provisions of this section.

While section 315 has been amended to prevent broadcasters from making higher than normal time charges for political broadcasts and to prevent claimants for equal time from exploiting routine news reporting of rival candidates activities during a campaign, the basic rules established in 1934 are still in use today.

Over the past forty-seven years two significant problems have emerged which call into question the success of section 315 in accomplishing the purpose for which it was adopted. Section 315 was designed to assure ready and equal access to the air waves for all "legally qualified candidates." What it really provided was an equal opportunity for each candidate to purchase equal time if the candidate had the funds with which to purchase such time for political broadcasts. No doubt the framers of section 315 were thinking of the traditional American two party system when the law was being written. No doubt it seemed to be a reasonable assumption in 1934 when small local radio stations charged as little as $ 15.00 for a 15 minute time purchase that free time would be given to the Republican and Democrat candidate in most political campaigns.

Neither of the implicit assumptions upon which section 315 appears to have been based have turned out to be true. While the two major national political parties have continued to win the national elections, there have been considerably more than two "legally qualified candidates" in most presidential elections. In addition to the two major parties there were 14 minor party candidates in the 1960 election, and the New York Times reported the vote totals for 21 presidential tickets of the minor parties in the 1980 election. The non-major candidates received a total of 7,114,995 votes which was about nine per cent of the total vote cast.[3]

The cost of radio and especially television time has risen even faster than the inflation index to become the largest single cost factor in most local and national political campaigns. The result of a wrong guess in regard to these two factors has been that section 315 has acomplished an effect exactly opposite that which it was designed to bring about. While stations and networks might be willing to give free time to two major national political candidates, they will certainly run rapidly from the notion of giving time to 23 candidates for the presidency. The problem is centered in the term "legally qualified candidate," which in a general election means any candidate who is on any ballot in that election. In 1980 Mr. Andrew Pulley was the candidate of the Socialist Workers Party; he was on the ballot in five states and he received a total of 6,032 votes, and he was a legally qualified candidate for President of the United States.

In a primary election one becomes a legally qualified candidate by complying with the local regulations in each state. Some states require petitions with a specified number of signatures from registered voters while others declare you a legally qualified candidate upon the filing of a letter with the election authorities.

Having examined the theoretical effects of section 315 on national elections, we shall now look at the actual election campaigns. Franklin D. Roosevelt initiated the reality of the broadcast political campaign in 1932, and he made equally effective use of radio in 1936, 1940, and 1944. It is worth noting that Roosevelt's political campaigns and years in office almost spanned the golden age of network radio. The 1948 election between Truman and Dewey marked the first telecast of national nominating conventions and contributed to the fighting image of "give 'em hell Harry," which grew out of President Truman's televised speech accepting the nomination after the Dixiecrats walked out of the convention to support Senator Strom Thurmond of South Carolina as a minor party candidate for the presidency.

Unfortunately there were no national television network hookups in operation in 1948, only 29 television stations were in operation, and perhaps one million receivers were in use.[4] Therefore it seems reasonable to regard the 1948 election as the last pre-television campaign. It was also the last year for the traditional campaign train swing around the nation, which was a central feature of Truman's winning effort.

The two contests between Eisenhower and Stevenson really mark the opening of the era of television as a mass medium. The Republicans engaged the Ted Bates Advertising Agency to work on the campaign and they responded with a saturation spot advertising effort. Most of the television spot advertising was one minute or less in length and usually dealt with one idea such as General Eisenhower promising to go to Korea to end the fighting there, or relating to such themes as inflation or corruption.

An historic event of that era was Richard Nixon's famous "Checkers" speech in which he successfully warded off charges resulting from publicity given to an $ 18,000 campaign fund raised by a group of California supporters of the young Vice Presidential candidate. The rising cost pattern of media time buying for campaign speeches can be seen in the $75,000 billing for presentation on one network, NBC.

The 1960 election between Nixon and Kennedy is of major importance to this analysis of section 315. For that one election Congress voted to suspend section 315 to permit some experimentation with the idea of campaign debates between the two major party candidates. There are probably two basic reasons why 315 was suspended and the so called "Great Debates" materialized. There was a great deal of criticism of the way in which the Eisenhower campaign had used Madison Avenue advertising techniques in the 1952 and 1956 campaigns. As a result numerous individuals and concerned groups including the Speech Communication Association and the American Forensic Association began to pass resolutions and lobby Congress to expedite campaign debates by suspending section 315 for the 1960 election.

Second, as a member of the Committee that worked on the campaign debates in 1960, I sensed a feeling among all of those involved that the debates would never take place. The networks were quick to agree because they believed that Congress would not suspend section 315, Congress passed the special exception because many members were certain that the candidates would never agree on a debate, and all but one of the potential candidates, Senator Stuart Symington of Missouri, agreed to debate because they did not think the debates would actually happen. There were four one hour nationally televised debates and the verdict of time has been that Kennedy won the debates and the election.[5]

In March of 1961 President Kennedy stated that he planned to debate his opponent in the 1964 election, and it seems reasonable to assume that he would have done so had he been alive to seek a second term.[6] In 1964 President Lyndon Johnson decided that it would be unwise for an incumbent President to engage in a national television debate with an opponent for the nation's highest office. Possibly President Johnson was influenced by his comfortable lead over Barry Goldwater and he may have been rendered cautious by John Kennedy's coming from behind victory just four years earlier. Consequently, the 1964 campaign saw extended use of commercials and short television speeches by both major parties but no debates. In 1964 Congress considered on the floor not a single bill to once again suspend section 315. For their part the networks were not anxious to promote campaign debates. In 1960 the networks decided to voluntarily offer the 14 minor candidates one hour of television time so that they might present their views to the country. There had been a number of court actions brought against the broadcasters even though section 315 had been suspended by Congress for the 1960 election.

In fairness to the broadcasters it should be pointed out that each of the minor parties wanted equal time to the major candidates. Since the two major candidates had enjoyed the use of four hours of air time, an average of two hours per candidate, it would have required 28 hours of network time to have met the demands of the other 14 candidates. The effect on audience size and ratings of an additional 28 hours of political speeches would also have been a factor to reckon with.

The two successful campaigns by Richard Nixon in 1968 and 1972 brought into the arena a veteran of the Great Debates of 1960. This time Nixon took no chances. Television was used extensively in the campaign, but under conditions in which the staff of the candidate were in complete control of the situation. The television aspects of the 1968 campaign have been carefully reported in the book, The Selling of the President [7] and the details do not need to be repeated here. The author's conclusion about television in the 1968 campaign is however, worth repeating:

> With the coming of television, and the knowledge of how it could be used to seduce voters, the old political values disappeared. Something new, murky, and undefined started to rise from the mists....Style became substance. The camera's candid eye can be completely deceived if the subject controls the medium by using his own professional planners, writers, make-up men, producers, and camera operators. [8]

In the 1976 election the first non-elected President in American history was facing an opponent who was by his own definition "an outsider," subsequently it was not surprising that a series of televised campaign debates should occur after a 16 year lapse. Again Congress failed to suspend or modify section 315, but a way around that problem was devised when the League of Women Voters raised the funds with which to purchase television time and sponsored the debates. Once again the winning edge in the television debates was associated with a narrow victory in the election to the office of President.

Except for the added complication of the Anderson candidacy in 1980, and the greater margin of victory for Ronald Reagan, the recent campaign followed the same script as in 1976 in that the League of Women Voters purchased the time and sponsored the debates.

What conclusions can we draw from this review of national campaigns since the passage of section 315 in 1934? David Halberstam's conclusion is that:

> Television's dominance of the American political process began in 1960, but never had it seemed more complete than last year. It was a complete media campaign... All of this is like the campaign itself, a melancholy business. Take the two main candidates in the 1980 election. Both owed much of their respective careers to the media-no ward heeling for either. [9]

Otto Friedrich looking back at the 1980 election in February of 1981 suggested that:

> Although TV has come to dominate and manipulate U.S. politics, the shrewdest politicians have found that it is perfectly possible to decipher the camera's needs and then take advantage of them. TV enables a politician to elude all the controls of party and policy and present himself directly to the people...There are two important aspects of political campaigning in the age of television that would benefit from change...The debates should become standard... The candidates should get free air time...The main obstacle to free air time is not network greed but section 315, which requires that equal time be granted to all candidates, no matter how obscure or absurd. Section 315 should be substantially revised- or junked. [10]

There have been many other proposals to simply repeal section 315 and give the broadcasters a free hand in allocating time for political campaigns. Such an action entails considerable risk. At the least it would give station and network owners enormous potential political power. The proposal I wish to set forth is relatively simple to administer, and I will argue that it will make free time feasible for serious candidates in all elections.

What I propose is simply that we define a "legally qualified candidate" as one who has been nominated by a party which received at least 2% of the total votes cast in the previous election for that office. A new political party such as the Anderson group could qualify for free time by securing signatures from the same number

of registered voters. The same requirements would serve for primary elections except that a candidate would need to obtain signatures from a number of registered voters equal to 2% of the votes cast in the preceeding primary election. Let us examine this proposal in terms of the results of the 198[illegible] presidential election.

The total number of votes cast was 86,495,678, Ronald Reagan received 43,899,248 votes which was 50.8% of the total, while Mr. Carter received 35,481,435 votes for 41.02% of the total vote. Independent candidate John Anderson received 5,719,435 votes which gave him 6.61% of the total vote. Since 2% of the total vote cast would equal 1,729,912 votes, the Republican, Democratic, and Independent parties would automatically qualify for free time in televised debates during the 1984 elections. There were 20 other minor party candidates in the 1980 election, and the top two finishers behind the three leading candidates were Ed Clark of the Libertarian Pary with 920,859 votes for 1.05% of the total, and Barry Commoner of the Citizens Pary with 230.377 votes for .27%. All of the remaining 18 candidates had less than 50,000 votes.[11]

While none of the 20 minor parties in the 1980 race who finished behind John Anderson would automatically qualify for free time under this proposal, the Libertarian Party and the Citizens Party would appear to have at least some possibility for qualifying in the future by increasing their vote total to 2%. A new movement like the Anderson group would qualify because they would need more than the required 1,729,912 signatures of voters just to get on the ballot in a reasonable number of states.

If we review all of the national elections since the passage of section 315 in 1934 we will find only two political movements which would clearly make the proposed 2% of the total vote required for automatic qualification as a "legally qualified candidate" entitled to free broadcast time on a par with the Republicans and the Democrats. Those two groups are the George Wallace American Independent movement and the John Anderson group. It is likely that minor parties which qualify will be transitory in nature since the American Independent candidate in 1980, John Rarick, finished seventh with only 41, 172 votes.

It should be remembered that the same rule will apply in state and local races, and thus a minor party could qualify for free time in a locality where it was strong. In the 1980 election the Libertarians were more than 6,000 votes ahead of Anderson in Alaska, while the Citizens Party was over 1,000 votes ahead of the Libertarians in the state of Washington.

The second part of this proposal is that we require a series of debates between presidential candidates which would be carried on television and radio by the national networks. The time for the debates would be donated by the broadcasters and all " legally qualified candidates" who met the proposed 2% rule would be elgible to participate. The debates would be administered by an unpaid non-partisan board of commissioners. Candidate disputes with that board could be appealed to the federal courts for resolution.

That, in essence is the proposal for revision of section 315. We have about three years in which to consider, study, debate, and hopefully, implement it.

ENDNOTES

[1] Sydney W. Head, Broadcasting in America,(3rd Edition,) (Boston: Houghton Mifflin, 1976) p. 498.

[2] Erik Barnouw, The Golden Web: A History of Broadcasting in the United States 1933-1953,(New York: Oxford University Press, 1968) p.15.

[3] Unsigned Article, "Voter Total Lowest Since Truman-Dewey," New York Times, November 22, 1981, Section B, p. 5.

[4] Christopher Sterling and John Kittross, Stay Tuned: A Concise History of American Broadcasting, (Belmont, California: Wadsworth Publishing Co., 1978).

[5] Head, Broadcasting in America, p. 499.

[6] Personal Meeting with President John F. Kennedy, March 4, 1961, The White House, Washington, D.C.

[7] Joe McGinness, The Selling of the President, (New York: Trident Press, 1969).

[8] McGinnis, The Selling of the President.

[9] David Halberstam, "How Television Failed the American Voter," The Washington Post, January 11, 1981, magazine section, p. 4.

[10] Otto Friedrich,"To Reform the System: How the Word Spreads," Time, (Special Project: American Renewal,) February 23, 1981, pp. 39-40.

[11] Unsigned Article, New York Times.